



David A. Paterson
Governor

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
CONSUMER PROTECTION BOARD

Mindy A. Bockstein
Chairperson and Executive Director

July 17, 2008

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Re: Docket No. R-1315, Amendment of Rules of Regulation DD, implementing the Truth in Savings Act

Dear Ms. Johnson:

On behalf of the New York State Consumer Protection Board (CPB), I am pleased to submit comments on proposed amendments to the rules of Regulation DD, implementing the Truth in Savings Act (TISA). The CPB was established in 1970 pursuant to New York Executive Law Sections 552 and 553. It is the mission of the CPB to protect, educate, and represent consumers. The CPB is dedicated to formulating informational and educational outreach programs and initiating policy development. Currently, the CPB is developing comprehensive outreach programs on issues such as identify theft, Internet safety, financial literacy, and credit card management. Our Consumer Assistance Unit (CAU), which takes complaints five days a week, 8:30 a.m. to 4:30 p.m., via our toll-free helpline at 1-800-697-1220 and twenty-four hours a day, seven days a week via the web at www.nysconsumer.gov, responds to and resolves over 20,000 complaints and inquiries a year on a variety of topics including bank disputes, credit card disputes, identity theft, and product refunds and returns.

One recent consumer dispute that the CPB attempted to address earlier this year underscores the desperate need for overdraft practices reform. Kelly's story is in many ways a typical one. She is a Key Bank customer. As many consumers do, she miscalculated the amount in her checking account and, as a result, overdrawn her account in the amount of \$575.26. All but two of her overdrawn transactions were made via debit card -- one transaction totaled a whopping \$1.99. For *each* of the nine (9) overdrawn transactions that she or her husband made, she was assessed a fee of \$38.00.¹ Realizing her mistake the next day, Kelly obtained a bank check from another

¹ Actually, Kelly was assessed 10 overdraft item charges even though she made only 9 transactions for which there were insufficient funds.



financial institution with which she banks and quickly deposited \$5,011.54 into her Key Bank account. Because her deposit was in the form of a bank check, she was told by the Key Bank teller that her account would be credited immediately; there would be no holds placed on her funds. Kelly and her husband, believing there to be ample funds in her account, used their debit in the following days. All in all, they made 9 debit card purchases with their debit cards, believing all of them would be amply covered by the \$5,000 deposit and an additional directly deposited paycheck.

Key Bank had other plans. Despite telling its customer that the bank check would be processed like cash, the Bank placed a hold on it. As a result, in addition to the \$380.00 in fees that it charged Kelly and her husband for the debits made before she deposited \$5,000 into her account, Key Bank socked them with another \$380.00 assessment for \$459.75 in charges, for a total of \$760.00 worth of overdraft fees. Kelly paid a fee \$38 for a \$7.64 meal at McDonalds, and yet another fee of \$38.00 for \$10.80 worth of flowers for a sick friend of the family.

When Kelly, and the CPB on her behalf, contacted Key Bank, they refunded only \$190.00 of the \$760.00 they charged her, even though Kelly had been specifically told by a Key Bank teller that her bank check deposit would be immediately available. Kelly still was left \$570.00 poorer for the "courtesies" that Key Bank bestowed upon her. Under the circumstances, Kelly, and indeed any consumer, would rather that Key Bank deny all of her debit card transactions and their concomitant \$38 "courtesies."

The conduct by banks and credit unions as described above amounts to highway robbery. By one account, banks and credit unions are collecting \$17.5 billion per year in overdraft fees.² These fees are most frequently assessed against middle income and lower income Americans, particularly the young and the elderly.

The proposed rule amendments do not go nearly far enough in addressing the serious deficiencies in the regulation of overdrafts. Overdraft fees are really loans at egregious interest rates. Often consumers are automatically enrolled in this program without their consent. Certainly, they do not realize that they could lose \$760.00 or more for two days of debit charges.

In issuing its proposals, the Federal Reserve Board has acknowledged that something must be done. Specifically, in its proposed Regulation DD amendments, the Board sets forth notice and format requirements for informing consumers about their right to opt out of overdraft service.³ The Board also proposes requiring all institutions to

² Center for Responsible Lending, "Overdraft Loans Trap Borrowers in Debt: Unfair Bank Practices Artificially Increase Fees" CRL Issue Brief No. 18 (March 2008) found at <http://www.responsiblelending.org/issues/overdraft> (last viewed on July 10, 2008).

³ The Board, together with the Office of Thrift Supervision and the National Credit Union Administration Act (NCUA) also has provided a separate proposal amending Regulation AA of the FTC Act. This



disclose aggregate cost information concerning the overdrafts. We set forth our specific comments below:

Notice Provisions

The Board proposes that all financial institutions must provide notice of the right to opt out of overdraft protection in writing. (Proposed § 230.10(a).) The notice must contain: (1) a list of categories for which fees for paying an overdraft may be imposed; (2) the dollar amount of any fees or charges imposed for paying checks or other items when their insufficient funds; (3) the potential impact of fees in relation to the overdraft amount; (4) the maximum amount of overdraft fees per day or per statement period, or, if applicable, that there is no limit to the fees that can be imposed; (5) disclosure of the opt-out right; and, (6) a statement that the institution offers alternatives to overdrafts. (*Id.*) The notice must be provided to the consumer prior to the institution's imposition of any fee for insufficient or unavailable funds and either on each periodic statement reflecting any fee or charge for paying an overdraft or at least once per statement period sent after the institution's payment of the overdraft. (*Id.*)

While it is the CPB's position that consumers should affirmatively opt-in to avail themselves of overdraft "protection" rather than opt-out,⁴ the notice that the Board has proposed is insufficient in another respect. The proposed rule states that "an institution may, but is not required to, list additional alternatives for the payment of overdrafts." (Proposed § 230.10(b)(6).) Financial institutions should be required to list all alternatives to overdrafts. A consumer can only make an informed decision whether to opt-out of overdrafts if he or she has all relevant information. Therefore, the Board should revise its proposal accordingly.

Aggregate Fee Disclosures

In addition, the Board proposes aggregate fee disclosures (for current period and year-to-date) of all insufficient fund/overdraft fees in a separate table on each periodic statement. (Proposed § 230.11.) The CPB commends this proposal. The addition of a clear, concise chart disclosing periodic and annual overdraft/insufficient fund fees will quantify for consumers the high cost of using overdrafts, and will likely encourage them to investigate cheaper overdraft alternatives, or to more closely monitor their bank accounts.

proposal contains the substantive opt-out requirement for overdraft protection.

⁴ The CPB will submit its comments to the proposed opt-out requirement under separate cover.

Available Fund Disclosures

Finally, to avoid the confusion that consumers like Kelly experienced about the amount available in her checking account, the Board has also proposed a rule which requires institutions to disclose to the consumer only the amount of funds immediately available for use or withdrawal *without* incurring an overdraft. (Proposed § 230.11(c).) The rule would apply to all automated system balance inquiries. Banks would be allowed to provide a second balance, which would include additional funds available under the overdraft protection plan, so long as it was clearly disclosed.

The CPB is encouraged by the Board's recent proposed regulations. However, the federal government must go further to protect consumers from abusive and unfair practices, such as requiring that consumers affirmatively opt-in to overdraft plans. Thank you for your consideration of our comments.

Sincerely,



Mindy A. Bockstein
Chairperson and Executive
Director

